IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3394 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJABSING @ JEBU S/O. KIRPALSING SARDAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3394 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 26-02-2004. By the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about two criminal cases pending against the petitioner before Ghatlodiya Police Station. Both these cases are registered under the Bombay Prohibition Act. It is alleged that the petitioner is illegally dealing in country liquor. In the grounds of detention, the detaining authority has also relied upon the statement of two secret witnesses and the authority has claimed privilege under Section 9 (2) of the Act and, therefore, the names of those three witnesses have not been disclosed. The aforesaid order of detention is challenged by the petitioner on various grounds.

2) Mr.Prajapati, learned advocate for the petitioner submitted that at the time of passing the detention order, the petitioner was already in judicial custody and the authority has not properly stated as to on what basis it has reached the conclusion that on presenting bail application, petitioner will be released on bail and will continue his activity and, therefore, subjective satisfaction arrived by the detaining authority stands vitiated.

3) Mr.Prajapati, learned advocate for the petitioner submitted that before claiming privilege under Section 9 (2) of the Act, the authority has not tried to verify about the credentials and character of the detenu. He submitted that the privilege is claimed in a routine manner and, therefore, without any basis the authority has tried to withhold the names of witnesses and as a result of that the petitioner is denied the valuable right of making effective representation. To substantiate his say, Mr.Prajapati has relied upon the decision of this Court rendered in the case of KISHOR NAGINBHAI PARMAR v. STATE OF GUJARAT, reported in 2000 (4) GLR 3236.

4) In the aforesaid judgement after relying upon the judgement of the Division Bench, the learned Single Judge has specifically stated that the authority is required to take independent steps for considering general background, character, antecedents, criminal tendency etc., before reaching the subjective satisfaction while exercising powers under Section 9 (2) of the Act. As the said aspect is missing in this case also, the privilege claimed by the authority in this case is not genuine and proper.

5) Mr.Prajapati has also submitted that if the statements of witnesses are taken out, then it cannot be said that the detenu has committed breach of public order and for this purpose, he has relied upon the decision of the Division Bench of this Court rendered in L.P.A. No.223/2000, wherein Division Bench of this Court has held that on the basis of registered criminal cases under the Bombay Prohibition Act, it cannot be said that the petitioner is guilty of violation of public order.

6) In view of the judgements referred above, the order of detention is required to be set aside, as, it cannot be said that privilege is properly claimed by the authority under Section 9 (2) of the Act, and also on the ground that the breach of public order is not established.

7) At this stage, learned advocate for the petitioner submitted that in case the petitioner is released on bail he will not enter areas of Ghatlodiya and Naranpura police station as well as Village Chharodi upto 30th November, 2004, unless his presence is required by police authority in connection with aforesaid criminal cases. This statement is recorded and it is for the police authority to monitor the compliance of this statement.

8) For the foregoing reasons, this petition is allowed. The order of detention dated 26-02-2004 is quashed and set aside. The detenu, Ajabsing alias Jebu S/o. Kirpalsing Sardar is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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